

HBO is a leading supplier of premium video entertainment services (the HBO and Cinemax services). HBO's services currently are transmitted via satellite direct to home and to commercial affiliates that in turn utilize various methods of local video distribution, such as cable television, SMATV and MMDS (wireless cable). As a supplier of video programming, HBO has a strong interest in ensuring that its product is distributed as broadly as possible. The Notice recognizes that both the Local Multipoint Distribution Service ("LMDS") and the satellite services using the 28 GHz band would provide primarily video services, as well as other types of broadband services. HBO is encouraged by the potential of both LMDS and satellite services, operating in the 28 GHz band, to provide additional means of distributing video programming. HBO believes that by establishing an NRMC to develop rules for sharing the 28 GHz band by both services, the Commission will ensure that these services are deployed into the market in a timely and efficient manner.

The technical issues with respect to sharing the 28 GHz band between LMDS and satellite uplink services are not insignificant. Because of the complexity of the issues, HBO concurs with the Commission's view that the negotiated rulemaking process is the most efficient method by which to resolve this proceeding. Negotiation between those parties who have the greatest stake in the final consensus is likely to produce the most beneficial set of rules for all the parties concerned.

Among the interested parties are the users/consumers of the proposed 28 GHz band LMDS and satellite services. The Commission

has already noted that consideration should be given to providing representation on the NMRC for consumer groups.² HBO submits that the potential "users" of these services include video programmers such as HBO, as well as individual consumers.

The Commission has enumerated certain issues which the NRMC should address and resolve.³ Two of those issues are "the degree of competition anticipated within the relevant market" and "the degree to which . . . technological innovations will be stimulated by the proposed allocation." HBO submits that the proper resolution of these issues will require the NRMC to consider additional related matters.

First, the NRMC should determine whether any entity has a proprietary interest in some or all of the technology necessary to operate an LMDS system at 28 GHz. If so, and if the final rules provide for multiple LMDS licensees in each market, then some provisions must be made to ensure that the technology necessary to provide LMDS services at 28 GHz is available to all potential licensees.

Second, in order to promote competition among LMDS licensees, the NRMC must address the required level of coordination among LMDS licensees in the same market. The extent to which consumers of LMDS services can readily obtain services from alternative LMDS providers will have a significant effect on

² 59 Fed. Reg. 7961 at 7963.

³ Notice at ¶ 46.

the level of competition between such providers. Towards this goal, the NRMC should propose methods (e.g., collocation of transmitters) which will facilitate the ability of consumers to enjoy a meaningful choice among competitive LMDS service providers.

Finally, the NRMC should be sensitive to maintaining a technological balance between the LMDS and the satellite services. Especially in light of the requirements for programmers to provide their services to a broad range of multichannel video program distributors, it is important that the Commission's rules not unduly restrict the market or capability of any one of the newly emerging local distribution technologies.

CONCLUSION

For the foregoing reasons, HBO supports the establishment of an NRMC to negotiate proposed technical rules for shared use of the 28 GHz band by LMDS and satellite service providers. Furthermore, HBO submits that such an NRMC must address and explain competitive issues related to the availability of the technology necessary to provide LMDS at 28 GHz and the ability of consumers and programmers to take advantage of competitive LMDS providers.

Respectfully submitted,

HOME BOX OFFICE, A DIVISION OF
TIME WARNER ENTERTAINMENT
COMPANY, L.P.

By: 

Benjamin J. Griffin
Matthew J. Harthun
REED SMITH SHAW & MCCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

March 21, 1994